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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/616,616	07/14/2000	Earl T. Crouch	3000-045	7150

7590

06/18/2003

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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 06/18/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/616,616

Applicant(s)

CROUCH ET AL.

Examiner

Jenna-Leigh Befumo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 10-47 is/are pending in the application.
- 4a) Of the above claim(s) 1, 10-23 and 45-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 28, 2003 has been entered.

Response to Amendment

2. Amendment B, submitted as Paper No. 9 on March 31, 2003, has been entered. Claim 24 has been amended. Therefore, the pending claims are 1 and 10 – 47. Claims 1, 10 – 23, and 45 – 47 are withdrawn from consideration as being drawn to a nonelected invention.

Claim Rejections - 35 USC § 112

3. Claims 24 – 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. The phrase “single operation” in claim 24 is indefinite. It is unclear what qualifies as a single operation. Does the fabric need to stay on a single machine for it to be formed and finished in a “single operation”? If the fabric is formed and then immediately transferred to another machine does this qualify as one or two “operations”? At what point in processing does one operation end and another begin? Claims 25 – 44 are rejected due to their dependency on claim 24.

Claim Rejections - 35 USC § 102

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5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 24, 25, 27, 28, 31, 37, 38, and 42 – 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Porter (5,399,419) for the reasons of record.

7. Claims 24, 37, 38, and 42 – 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner, Jr. et al. (5,950,457) for the reasons of record.

Claim Rejections - 35 USC § 102/103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 32 – 36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Porter et al. or Wagner, Jr. et al. for the reasons of record.

Claim Rejections - 35 USC § 103

10. Claims 24, 25, 27, 28 31 – 38 and 42 – 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouch (5,895,705) in view of Porter et al. for the reasons of record.

11. Claims 39 – 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al. or Wagner, Jr. et al. for the reasons of record.

Claims 39 – 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouch et al. in view of Porter et al. for the reasons of record.

12. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al. or Wagner et al. in view of Chapman et al. (4,946,739) for the reasons of record.

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13. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al. or Wagner, Jr. et al. in view of Oakland et al. (6,287,743) for the reasons of record.

Response to Arguments

14. Applicant's arguments filed March 31, 2003 have been fully considered but they are not persuasive. The Applicant argues that the claims are allowable over the prior art because Porter, Wagner, and Crouch do not teach forming and finishing the fabric in a single operation (Amendment B, page 4). Further, the Applicant argues that the method limitation produces a structurally different product which is distortion free as set forth in the specification (amendment B, page 4).

15. First, with respect to the fact that Wagner, Porter, and Crouch do not teach forming and finishing the product in a single operation, this limitation is not given patentable weight at this time since the Applicant has not established that the process limitation produce a structurally different product than those products produced in the prior art. The patentability of a product is based on the product itself and not the processing limitations used to make the product. In other words, if the product is the same as the same or an obvious variant from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the Applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983).

16. In order to show unobvious differences, the Applicant must provide evidence which establishes that the method limitations produce a structurally different product to overcome the prior art. In this case the Applicant argues that the present invention is structurally different as

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set forth in the Specification (Amendment B, page 4). This is not sufficient to overcome the prior art. First, it is unclear what is different about the structure. What structural limitations are different? How much different are these features from the prior art? Second, nowhere in the specification is the product produced by Wagner, Porter, or Crouch directly compared to the product of the present invention. Therefore, the Applicant has failed to establish that the prior art does not have the same structure as the claimed product. The Applicant must compare their invention to the closest prior art, in this case Wagner, Porter, and Crouch, and show that those products do not have the same features as the claimed invention.

While the Applicant does have examples which compare coated fabrics produced on Tenter frames to the Applicant's invention, the Applicant does not detail the production conditions used to make the fabrics. Are the same fabrics and coating materials used in all three examples? What tension and speed levels are used in the different examples? Would these fabrics be the same as those made by Porter, Wagner, or Crouch? Without this information it is impossible to determine that Porter, Wagner, or Crouch are in any way related to these examples. Further, the Applicant suggests that the difference in results is due to the speed of the high speed tenter frame and not producing the fabric in a single operation, when the Applicant states that "speed appears to be a major contributor" (Specification, page 13, lines 17 – 19). However, the speed limitation is not claimed. Thus, it is unclear if the improved structure is due to the fabric being formed in a single operation (which is claimed) or the speed limitations (which is not claimed), or both features combined. These examples do not provide enough information to identify what structural differences are occurring or why they are occurring. In view of the fact that the Applicant has not established that the claimed method limitations produce a significantly

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different structure from the prior art, the method limitations are not given patentable weight at this time. Further, the evidence provided in the specification is not sufficient to demonstrate that the prior art, Wagner, Porter, and Crouch, would have a different structure than the present invention. Therefore, the rejections are maintained.

17. The Applicant must provide further evidence which clearly establishes what structural differences are occurring between the present invention and the products produced by Wagner, Porter, and Crouch, i.e., the coated fabrics made by the processes and materials taught in these specific references, and not the comparative examples in the specification. In this evidence the Applicant must detail what process limitations are being used. Further, the Applicant must demonstrate that structural differences are due to the claimed method limitations and not due to method limitations or other structural features which are not claimed. This can be established by using the same processing limitations except for the method limitation that causes the improved results, i.e., the single operation or speed. Only ~~will~~ then will the claimed method limitations be given patentable weight. And until the Applicant provides better evidence to demonstrate the prior art fabrics do not have the improved structure, those fabrics are viewed to have the same structural limitations since both the prior art and the present invention teach applying a coating to a weft inserted, warp knit fabric, producing identical final products. Therefore, the rejections are maintained.

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Conclusion

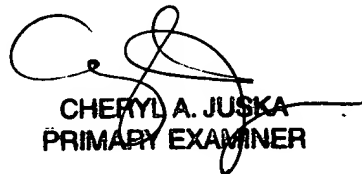
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (9:00 - 5:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo
June 13, 2003



CHERYL A. JUSKA
PRIMARY EXAMINER